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EXAMINER	
NAJARIAN, LENA	
ART UNIT	**PAPER NUMBER**
3626	

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/976,967	MAULT ET AL.	
	Examiner	Art Unit	
	Lena Najarian	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 October 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *07 May 2002* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *20020118*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: item 90 (p. 21, line 1), item 222c (p. 28, line 23), item 296 (p. 32, line 22), item 298 (p. 33, line 1). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Fig. 2E, items 116 (Fig. 14), 130 (Fig. 15), 162 (Fig. 16), 170 (Fig. 17), 190, 192 (Fig. 18), and 270 (Fig. 20C). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the

sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 1 is objected to because of the following informalities: in line 1, "of" should be inserted between "method" and "integrated". Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 7-8, 10-11, 14-15, 18, and 21-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Lackey et al. (US 6,506,152 B1).

(A) Referring to claim 7, Lackey discloses a method of integrated calorie management using a computing device, said method comprising the steps of (col. 2, lines 4-27 and abstract of Lackey):

identifying a user using the computing device (col. 5, lines 32-35 of Lackey);

selecting a health target for the user using the computing device (col. 6, lines 20-30 of Lackey);

measuring food consumption by the user during a predetermined time interval to determine a total calorie intake (TCI) of the user during the time interval by the computing device (col. 2, lines 4-27 of Lackey);

measuring physical activity of the user during the time interval, wherein the measured physical activity and a measured resting metabolic rate are used to determine a total energy expenditure (TEE) of the user during the time interval by the computing device (col. 1, lines 24-45 of Lackey);

determining from the total energy expenditure measurement and the total calorie intake value a caloric balance (CB) for the user by the computing device (col. 3, lines 8-19 of Lackey); and

using the caloric balance by the user to balance the user's caloric intake with the user's physical activity to meet the health target (col. 5, line 66 – col. 6, line 30 of Lackey).

(B) Referring to claim 8, Lackey discloses the step of measuring the resting metabolism (RM) of the user (col. 3, lines 8-15 of Lackey).

(C) Referring to claim 10, Lackey discloses wherein the computed calorie balance is displayed on a computing device (col. 4, lines 55-58 of Lackey).

(D) Referring to claim 11, Lackey discloses wherein the comparison of the computed calorie balance to a predetermined target calorie balance is displayed on a computing device (col. 4, lines 38-58 of Lackey).

(E) Referring to claim 14, Lackey discloses wherein said step of identifying the user includes providing the user's height and weight (col. 5, lines 32-35 and col. 3, lines 20-26 of Lackey).

(F) Referring to claim 15, Lackey discloses wherein said step of providing a health target includes providing a target weight, or target nutrient goal (col. 6, lines 18-29 of Lackey).

(G) Referring to claim 18, Lackey discloses wherein the user provides physical activity information to determine the total energy expenditure measurement (col. 1, lines 24-34 of Lackey).

(H) Referring to claim 21, Lackey discloses graphically providing the user on a display for the computing device an indication of whether the calorie balance is progressing favorably or unfavorably towards the health target (Fig. 3, col. 4, lines 55-58, and col. 6, lines 18-30 of Lackey).

(I) Referring to claim 22, Lackey discloses wherein the graphical indication displayed includes a plurality of icons (Fig. 3 and col. 6, lines 18-30 of Lackey).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1-5, 9, 12, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lackey et al. (US 6,506,152 B1) in view of Karkanen (5,839,901).

(A) Referring to claim 1, Lackey discloses a method of integrated calorie management, said method comprising the steps of (col. 2, lines 4-27 of Lackey):

measuring a resting metabolic rate (RM) of a user (col. 3, lines 8-15 of Lackey);

utilizing the measured resting metabolic rate and user activity level over a predetermined time interval to determine a total energy expenditure (TEE) of the user (col. 1, lines 24-45 of Lackey);

determining a total calorie intake (TCI) value representing the person's total calorie intake during the predetermined time interval (col. 2, lines 4-27 of Lackey); and

determining from the total energy expenditure measurement and the total calorie intake value a caloric balance (CB) for the user (col. 3, lines 8-19 of Lackey).

Lackey does not expressly disclose using a rate of change of the measured resting metabolic rate to determine when to remeasure the resting metabolic rate of the user. However, Lackey does disclose using a rate of change of the measured body fat percentage to determine when to remeasure the body fat percentage of the user (col. 2, lines 4-15 of Lackey).

Karkanen discloses monitoring the changes of the resting metabolic rate (col. 9, lines 36-40 and col. 19, lines 59-67 of Karkanen).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Lackey to include Karkanen's feature since metabolic rate and body fat percentage are related (lower body fat percentage results in a higher resting metabolic rate). The motivation for doing so would have been to enable the individual to detect resting metabolic rate changes so as to enable the individual to know the reasons why the individual is losing or not losing weight (abstract of Karkanen).

(B) Referring to claim 2, Lackey does not expressly disclose wherein the rate of change of the measured resting metabolic rate varies inversely with the frequency of remeasuring the resting metabolic rate of the user. However, Lackey does disclose wherein the rate of change of the body fat percentage varies inversely with the frequency of remeasuring the body fat percentage of the user (col. 2, lines 4-15 of Lackey).

Karkanen discloses monitoring the changes of the resting metabolic rate (col. 9, lines 36-40 and col. 19, lines 59-67 of Karkanen).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Lackey to include Karaken's feature since metabolic rate and body fat percentage are related (lower body fat percentage results in a higher resting metabolic rate). The motivation for doing so would have been to enable the individual to detect resting metabolic rate changes so as to enable the individual to know the reasons why the individual is losing or not losing weight (abstract of Karkanen).

(C) Referring to claim 3, Lackey discloses wherein the computed calorie balance is displayed for the time interval on a computing device (col. 4, lines 55-58 of Lackey).
(D) Referring to claim 4, Lackey discloses wherein the comparisons of the computed calorie balance to a predetermined target calorie balance is displayed for the time interval on a computing device (col. 4, lines 38-58 of Lackey).
(E) Referring to claim 5, Lackey does not expressly disclose wherein the displayed comparisons also include a display indicating the trends of the computed calorie balances with respect to said target calorie balance.

Karkanen discloses a graphical display indicating trends (Fig. 2 and col. 9, lines 36-41 of Karkanen).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Karkanen within Lackey. The motivation for doing so would have been to forecast changes (col. 9, lines 36-41 of Karkanen).
(F) Referring to claim 9, Lackey discloses using a rate of change of the measured body fat percentage to determine when to remeasure the body fat percentage of the user (col. 2, lines 4-15 of Lackey).

However, Lackey does not disclose using a rate of change of the measured resting metabolic rate to determine when to remeasure the resting metabolic rate of the user.

Karkanen discloses monitoring the changes of the resting metabolic rate (col. 9, lines 36-40 and col. 19, lines 59-67 of Karkanen).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Lackey to include Karkanen's feature since metabolic rate and body fat percentage are related (lower body fat percentage results in a higher resting metabolic rate). The motivation for doing so would have been to enable the individual to detect resting metabolic rate changes so as to enable the individual to know the reasons why the individual is losing or not losing weight (abstract of Karkanen).

(G) Referring to claim 12, Lackey does not expressly disclose wherein the displayed comparison also includes a display indicating a trend of the computed calorie balance with respect to said target calorie balance.

Karkanen discloses a graphical display indicating trends (Fig. 2 and col. 9, lines 36-41 of Karkanen).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Karkanen within Lackey. The motivation for doing so would have been to forecast changes (col. 9, lines 36-41 of Karkanen).

(H) Referring to claim 16, Lackey does not expressly disclose wherein the computing device provides information regarding targets and goals as part of a weight control program.

Karkanen discloses that the computing device provides information as part of a weight control program (col. 1, lines 7-23 of Karkanen).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Karkanen within Lackey. The motivation for

doing so would have been to optimize the individual's weight loss (col. 1, lines 17-23 of Karkanen).

(I) Referring to claim 17, Lackey does not disclose wherein the computing device provides a nutritional value of the food intake by the user.

Karkanen discloses wherein the computing device provides a nutritional value of the food intake by the user (col. 5, lines 26-35 of Karkanen).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Karkanen within Lackey. The motivation for doing so would have been to forecast and control individual weight changes (col. 5, lines 26-35 of Karkanen).

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lackey et al. (US 6,506,152 B1) in view of Karkanen (5,839,901), and further in view of Mault (4,917,108).

(A) Referring to claim 6, Lackey and Karkanen do not disclose wherein the resting metabolic rate is measured by an indirect calorimeter which produces the resting metabolism measurement by analyzing the difference in the contents of the gas inhaled and exhaled by the user.

Mault discloses wherein the resting metabolic rate is measured by an indirect calorimeter which produces the resting metabolism measurement by analyzing the difference in the contents of the gas inhaled and exhaled by the user (col. 1, lines 6-27 and col. 2, lines 5-21 of Mault).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Mault within Lackey and Karkanen. The motivation for doing so would have been to measure the energy expenditure of humans during the course of a weight loss diet and to allow for adjustment of caloric inputs in order to achieve a target loss (col. 1, lines 15-16 and 28-31 of Mault).

9. Claims 13 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lackey et al. (US 6,506,152 B1) in view of Mault (4,917,108).

(A) Referring to claim 13, Lackey does not disclose wherein said resting metabolism is measured by an indirect calorimeter which determines the resting metabolic rate measurement by analyzing the difference in the contents of the gas inhaled and exhaled by the person.

Mault discloses wherein said resting metabolism is measured by an indirect calorimeter which determines the resting metabolic rate measurement by analyzing the difference in the contents of the gas inhaled and exhaled by the person (col. 1, lines 6-27 and col. 2, lines 5-21 of Mault).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Mault within Lackey. The motivation for doing so would have been to measure the energy expenditure of humans during the course of a weight loss diet and to allow for adjustment of caloric inputs in order to achieve a target loss (col. 1, lines 15-16 and 28-31 of Mault).

(B) Referring to claim 27, Lackey does not disclose including an indirect calorimeter to measure the resting metabolic rate of the user.

Mault discloses including an indirect calorimeter to measure the resting metabolic rate of the user (col. 1, lines 6-27 of Mault).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Mault within Lackey. The motivation for doing so would have been for this important knowledge to be used for the adjustment of caloric inputs in order to achieve a target weight loss (col. 1, lines 28-32 of Mault).

10. Claims 19-20 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lackey et al. (US 6,506,152 B1) in view of Stotler (US 6,341,295 B1).

(A) Referring to claim 19, Lackey does not disclose wherein the user is provided a report of progress made during the time interval towards the target weight on the computing device.

Stotler discloses wherein the user is provided a report of progress made during the time interval towards the target weight on the computing device (col. 3, lines 26-52 of Stotler).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Stotler within Lackey. The motivation for doing so would have been to help users achieve their goals (col. 3, lines 42-52 of Stotler).

(B) Referring to claim 20, Lackey does not disclose wherein a level of progress made during the time interval towards the target weight is represented on the computing device by a progress-related icon.

Stotler discloses wherein a level of progress made during the time interval towards the target weight is represented on the computing device by a progress-related icon (Fig. 1 and col. 3, lines 42-52 of Stotler).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Stotler within Lackey. The motivation for doing so would have been to help users achieve their goals (col. 3, lines 42-52 of Stotler).

(C) Referring to claim 28, Lackey does not disclose wherein the computer is a handheld PDA.

Stotler discloses wherein the computer is a handheld PDA (col. 2, lines 25-41 of Stotler).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Stotler within Lackey. The motivation for doing so would have been to use a self-contained portable device (col. 2, lines 25-41 of Stotler).

11. Claims 23, 26, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lackey et al. (US 6,506,152 B1).

(A) Referring to claim 23, Lackey discloses a system of integrated calorie management comprising (col. 2, lines 4-27 of Lackey):

a computer having a processor, a memory, a display and a user input mechanism (col. 5, lines 3-13, col. 4, lines 8-20, and col. 3, lines 58-59 of Lackey);

a method of integrated calorie management stored in said memory of said computer system (col. 5, lines 3-13 of Lackey);

a user using the method of integrated calorie management stored in said memory of said computer system to achieve a target health goal by providing a total calorie intake (TCI) representing the user's total calorie intake during a time interval, determining by the computer a total energy expenditure (TEE) representing the total energy expenditure of the user during the time interval; determining by the computer a resting metabolic rate for the user, wherein a calorie balance (CB) value for the time interval is determined from the total energy expenditure value and the total calorie intake value (col. 3, lines 8-19, col. 1, lines 24-45, col. 2, lines 4-27, and col. 6, lines 18-29 of Lackey);

and providing on the display graphical indication of the body fat percentage for the time interval (Fig. 3 and col. 6, lines 18-30 of Lackey).

Lackey does not expressly disclose a graphical indication of the calorie balance. However, it would have been obvious to a person of ordinary skill in the art at the time of the invention to display the calorie balance instead of the body fat percentage with the motivation of individuals knowing whether they are eating and expending the proper amount of calories.

(B) Referring to claim 26, Lackey discloses an activity monitor adapted to provide a signal correlated to the physical activity of the person to the computer (col. 3, line 60 – col. 4, line 7 of Lackey).

(C) Referring to claim 29, Lackey discloses a method of integrated calorie management using a computing device, said method comprising the steps of (col. 2, lines 4-27 and abstract of Lackey):

identifying a user using the computing device (col. 5, lines 32-35 of Lackey);

selecting a health target for the user using the computing device (col. 6, lines 20-30 of Lackey);

providing measured food consumption during a predetermined time interval by the user to the computing device (col. 2, lines 4-27 of Lackey);

using the food consumption by the computing device to determine a total calorie intake (TCI) of the user during the time interval (col. 2, lines 4-27 of Lackey);

providing measured physical activity of the user during the time interval to the computing device (col. 1, lines 24-45 of Lackey),

using by the computing device the measured physical activity and a measured resting metabolic rate to determine a total energy expenditure (TEE) of the user during the time interval (col. 1, lines 24-45 of Lackey);

determining by the computing device a caloric balance for the user during the time interval from the total energy expenditure measurement and the total calorie intake (col. 3, lines 8-19 of Lackey);

and maintaining the body fat percentage for the time interval in a balance log stored in a memory of the computing device (col. 5, lines 3-13 of Lackey); and

using the balance log by the user with the health target (col. 6, lines 18-30 of Lackey).

Lackey does not expressly disclose maintaining the calorie balance for the time interval in a balance log. However, it would have been obvious to a person of ordinary skill in the art at the time of the invention to maintain the calorie balance instead of the body fat percentage with the motivation of individuals knowing whether they are eating and expending the proper amount of calories.

12. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lackey et al. (US 6,506,152 B1) in view of Arai (6,095,949).

(A) Referring to claim 24, Lackey does not expressly disclose wherein one icon is displayed if the computed calorie balance for the time interval is favorable towards achieving the target goal, and another icon is displayed if the computed calorie balance for the time interval is unfavorable towards achieving the target goal.

Arai discloses wherein one icon is displayed if the computed calorie balance for the time interval is favorable towards achieving the target goal, and another icon is displayed if the computed calorie balance for the time interval is unfavorable towards achieving the target goal (col. 2, lines 47-56 and col. 4, lines 57-65 of Arai).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Arai within Lackey. The motivation for doing so would have been for the characters to indicate stages of weight loss (col. 4, lines 57-65 of Arai).

(B) Referring to claim 25, Lackey does not expressly disclose wherein the target goal is a target weight loss over a predetermined time period.

Arai discloses wherein the target goal is a target weight loss over a predetermined time period (col. 4, lines 46-49 of Arai).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Arai within Lackey. The motivation for doing so would have been for the user to indicate their target weight for progress monitoring (col. 4, lines 46-65 of Arai).

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

In
2-22-06

C. LUKE GILLIGAN
PATENT EXAMINER